



## **FEDERAL ELECTION COMMISSION**

**[Notice 2016-02]**

### **Policy Statement Regarding a Program for Requesting Consideration of Legal**

#### **Questions by the Commission**

**AGENCY:** Federal Election Commission.

**ACTION:** Policy Statement.

**SUMMARY:** The Federal Election Commission (“Commission”) adopted a program on August 1, 2011, providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit process. On October 23, 2013, the Commission revised this policy to provide an alternative electronic means to file a request with the Commission. This new policy is identical to the October 23, 2013 program, except that it makes two modifications: (1) To clarify that requests for consideration be submitted to the Commission Secretary to ensure that such request are processed in timely manner, and (2) to build five business days into the program to allow time for informal resolution of matters.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Lorenzo Holloway, Assistant General Counsel, or Margaret Forman, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** On August 1, 2011, the Commission adopted a program providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit

process. Specifically, when the Office of Compliance (“OC”) (which includes the Reports Analysis Division and the Audit Division) requests that a person or entity take corrective action during the report review or audit process, if the person or entity disagrees with the request based upon a material dispute on a question of law, the person or entity may seek Commission consideration of the issue pursuant to this procedure. This Commission is now revising this program. The October 23, 2013 revision of the program was identical to that August 1, 2011 program, except that it provided alternative means to file a request with the Commission. This change was made to address and clarify timeliness issues due to delays in the processing and receipt of requests mailed to the Commission, by encouraging requests to be filed electronically by email. Processing delays can result in an untimely submission of a request under the program. Persons and entities making such a request may not be aware that these processing delays can occur when documents are sent via first class mail to a federal government agency. As currently revised, the program is identical to the October 23, 2013 program, except that it makes two modifications: (1) To clarify that requests for consideration be submitted to the Commission Secretary to ensure that such request are processed in timely manner, and (2) to build five business days into the program to allow time for informal resolution of matters. The first change was made to address and clarify that these requests must be sent to the attention of the Commission Secretary, either through the dedicated email address, [LegalRequestProgram@fec.gov](mailto:LegalRequestProgram@fec.gov), or by mail to the Commission’s mailing address. There are two reasons for this change. First, the Commission Secretary is the person responsible for transmitting the Request to each Commissioner, the General Counsel, and the Staff Director, and therefore must be the recipient of any requests.

Second, if the request is sent to another staff member, by email or otherwise, the processing of the request could be delayed. The second change was made to build five business days into the program to allow time for informal resolution of matters. This informal resolution process will be especially helpful in situations where the information related to or generated in the request reveals information that could potentially result in the informal resolution of the matter, without using additional Commission resources to submit the request formally through the entire Program. Allowing five business days to attempt to informally resolve matters will provide OGC and OC with an amount of time dedicated exclusively to informal resolution efforts instead of dividing their time and resources between attempting informal resolution and preparing the recommendation memorandum in a compressed time period intended solely for drafting the recommendation to the Commission. This informal resolution process would allow for a more efficient use of Commission resources. The policy statement regarding this program is reprinted in its entirety, below. It includes the revisions outlined above, which appear in the third and fourth paragraphs of the “Procedures” section, below.

## **I. Procedures**

Within 15 business days of a determination by the Reports Analysis Division or Audit Division that a person or entity remains obligated to take corrective action to resolve an issue that has arisen during the report review or audit process, the person or entity may seek Commission consideration if a material dispute on a question of law exists with respect to the recommended corrective action.<sup>1</sup> A “determination” for purposes of triggering the 15 business days is either: (1) Notification to the person or

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<sup>1</sup> Many disputes involving corrective action requests hinge on questions of fact rather than questions of law, and thus are not appropriate for this procedure.

entity of legal guidance prepared by the Office of General Counsel (“OGC”) at the request of the Reports Analysis Division recommending the corrective action; or (2) the end of the Committee’s Audit Exit Conference response period.

Any request for consideration by a Committee during the report review process or the audit process shall be limited to questions of law on material issues, when: (1) The legal issue is novel, complex, or pertains to an unsettled question of law; (2) there has been intervening legislation, rulemaking, or litigation since the Commission last considered the issue; or (3) the request to take corrective action is contrary to or otherwise inconsistent with prior Commission matters dealing with the same issue. The request must specify the question of law at issue and why it is subject to Commission consideration. It should discuss, when appropriate, prior Commission matters raising the same issue, relevant court decisions, and any other analysis of the issue that may assist the Commission in its decision making. The Commission will not consider factual disputes under this procedure, and any requests for consideration other than on questions of law on material issues will not be granted.

All requests, including any extension requests, must be received by the Commission within 15 business days of the determination of corrective action. All requests must be directed to the attention of the Commission Secretary. Requestors may submit requests electronically via email. If a Requestor chooses to submit a request electronically via email, the email must be sent to [LegalRequestProgram@fec.gov](mailto:LegalRequestProgram@fec.gov). Requestors are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, requests may be submitted in paper form. Paper requests must be sent to the Federal Election Commission, Attn.: Commission Secretary,

999 E Street, NW., Washington, DC, 20463. Requestors are advised that if they submit a request, electronically or otherwise, to a different address than designated in this Policy, the processing of the request may be delayed. Upon receipt of a request, the Commission Secretary shall forward a copy of any request to each Commissioner, the General Counsel, and the Staff Director.

Any request for an extension of time to file will be considered on a case-by-case basis and will only be granted if good cause is shown, and the Commission approves the extension request by four affirmative votes within five business days of receipt of the extension request. Within five business days of notification to the Commissioners of a request for consideration of a legal question, if two or more Commissioners agree that the Commission should consider the request, OGC may, at that time, attempt to resolve the matter informally over the course of five business days. Within 15 business days from the date upon which OC and OGC conclude that the matter cannot be resolved informally, or from the expiration of the five business day period, whichever occurs first, OGC will prepare and circulate a recommendation in accordance with all applicable Commission Directives. If the matter is resolved informally, OC and OGC will notify the Commission that the matter has been resolved, and notify the Requestor in writing of the notification to the Commission. Informal resolution of a matter does not prevent the Requestor from seeking Commission consideration, in an additional or subsequent determination, subject to the requirements of this program.

After the recommendation is circulated for a Commission vote, in the event of an objection, the matter shall be automatically placed on the next meeting agenda consistent with the Sunshine Act, 5 U.S.C. 552b(g), and applicable Commission regulations, 11

CFR part 2. However, if within 60 business days of the filing of a request for consideration, the Commission has not resolved the issue or provided guidance on how to proceed with the matter by the affirmative vote of four or more Commissioners, the OC may proceed with the matter. After the 60 business days has elapsed, any requestor will be provided a copy of OGC's recommendation memorandum and an accompanying vote certification, or if no such certification exists, a cover page stating the disposition of the memoranda. Confidential information will be redacted as necessary.

After the request review process has concluded, or a Final Audit Report has been approved, a copy of the request for consideration, as well as the recommendation memorandum and accompanying vote certification or disposition memorandum, will be placed with the Committee's filings or audit documents on the Commission's website within 30 days. These materials will also be placed on the Commission's webpage dedicated to legal questions considered by the Commission under this program.

This procedure is not intended to circumvent or supplant the Advisory Opinion process provided under 52 U.S.C. 30108 and 11 CFR part 112. Accordingly, any legal issues that qualify for consideration under the Advisory Opinion process are not appropriate for consideration under this new procedure. Additionally, this policy statement does not supersede the procedures regarding eligibility and entitlement to public funds set forth in Commission Directive 24 and 11 CFR 9005.1, 9033.4, 9033.6 or 9033.10.

## **II. Annual Review**

No later than July 1 of each year, the OC and OGC shall jointly prepare and distribute to the Commission a written report containing a summary of the requests made

under the program over the previous year and a summary of the Commission's consideration of those requests and any action taken thereon. The annual report shall also include the Chief Compliance Officer's and the General Counsel's assessment of whether, and to what extent, the program has promoted efficiency and fairness in both the Commission's report review process and in the audit process, as well as their recommendations, if any, for modifications to the program.

The Commission may terminate or modify this program through additional policy statements at any time by an affirmative vote of four of its members.

On behalf of the Commission,

Dated: \_May 5, 2016

Matthew S. Petersen,  
Chairman,  
Federal Election Commission.

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